

Janet Napolitano
Governor

Todd Lang
Executive Director



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M E M O R A N D U M

To: Commissioners

From: Todd F. Lang, Executive Director

Date: September 27, 2006

Subject: Possible Independent Expenditure

On September 20, 2006, Commission Staff received from letter from Andy Gordon, on behalf of the Janet Napolitano 2006 Campaign ("Napolitano Campaign"), a participating candidate for Governor, regarding three websites for consideration of matching funds. (Attachment A.) The Executive Director recommends matching funds not be awarded for the reasons set forth in this memorandum.

I. Factual Background

The Napolitano Campaign submitted three websites for consideration of matching funds. The Napolitano Campaign states, "Each of these websites expressly advocates against re-election of Governor Napolitano and therefore entitles the campaign to matching funds."

Arizona Revised Statutes §16-901(14) provides the following definition for the term "independent expenditures":

"Independent expenditure" means an expenditure by a person or political committee, other than a candidate's campaign committee, that expressly advocates the election or defeat of a clearly identified candidate, that is made without cooperation or consultation with any candidate or committee or agent of the candidate and that is not made in concert with or at the request or suggestion of a candidate, or any committee or agent of the candidate.

Examples of express advocacy often contain the so-called "magic words" such as "vote for" "elect," "vote against," "defeat," or "reject," that would qualify as express advocacy under A.R.S. §16-901.01(A).

Independent expenditures against a participating candidates trigger matching funds pursuant to A.A.C. R2-20-113(B)(4), which provides:

If an independent expenditure is made against a participating candidate, the participating candidate will be eligible to receive matching funds, if applicable, for the amount of the independent expenditure. The participating candidate who was the subject of the expenditure will be the only candidate eligible to receive the matching funds, if applicable, for the cost of that expenditure.

II. Independent Expenditures & Issuance of Matching Funds

Review of www.stopjanet.org, reveals express advocacy through a banner that stated, “Governor Janet Napolitano must not be re-elected!” Commission staff was able to contact the webmaster of the website, Mr. Allan J. Ashinoff. In an e-mail, Mr. Ashinoff averred, “The cost to me is nothing (\$0). I own the server; I already had the line for the server for other reasons and I built the site myself without any help. I already owned the software as well. The content of the site is for the most part what I’ve been able to obtain off the web and that which was given to me is based off the web as well. I do not accept or use unqualified links.” Thus, the only cost for the production of this website is for the domain name. The domain name is the unique name that identifies an Internet site’s address. Research by staff has concluded that the average price for a domain name is under \$12.00.¹

In a similar manner, http://www.americanpatrol.com/REFERENCE/Napolitano-Janet-D-AZ_.html, is an added webpage of an already existing website, www.americanpatrol.com. In this case however, a domain name was not purchased specifically for the page.

The website, www.vetojanet.org, is a website produced by the Arizona Republican Party regarding the 2005-2006 legislative session. Research conducted by staff has shown that the website was launched on June 28, 2006. (Attachment B.) Accordingly, a \$420 expense for Website Design was reported by the Arizona Republican Party’s on June 30, 2006. (Attachment C.)

III. Recommendation

It is my recommendation that the Commission rule that matching funds should not be rewarded in the case of the abovementioned websites. The website www.stopjanet.org contains express advocacy and can be classified as an independent expenditure. Similarly, it is arguable that http://www.americanpatrol.com/REFERENCE/Napolitano-Janet-D-AZ_.html contains express advocacy. Taking the foregoing into consideration, the amount of matching funds is of negligible value. I recommend in future cases similar to this one, where the amount of an Independent Expenditure is so insignificant, matching funds not be rewarded.

In the case of www.vetojanet.org, I recommend the Commission find that the website does not contain express advocacy, as it appears the purpose of the website was to inform the Arizona Republican Party’s members of its position on the 2005-2006 legislative session. Furthermore, the date the website was created was well before the general election period, and is excluded from being matched pursuant to A.A.C. R2-20-113 (B) which specifies matching during the General Election Period will be distributed when expenditures are made “During the general election period.” The General Election Period began on September 13, 2006.

¹ “Go Daddy Software,” quotes, 1 Year Domain Registration (.ORG) for \$8.99. www.godaddy.com. “Domains Priced Right,” quotes 1 Year Domain Registration (.ORG) for \$9.95. www.domainspricedright.com. “Domain.com” quotes 1 Year Domain Registration (.ORG) for \$14.95. www.domain.com.

Dated this 27th day of September, 2006

By: _____
Todd F. Lang, Executive Director